



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 25, 1999

Marvin Rosen, Esq.
Greenberg, Traurig, Hoffman,
Lipoff, Rosen & Quentell, P.A.
1221 Brickell Avenue
Miami, FL 33131

RE: MUR 4884

Dear Mr. Rosen:

On March 16, 1999, the Federal Election Commission found that there is reason to believe that both you and Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentell, P.A. violated 2 U.S.C. § 441e, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Jose M. Rodriguez, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott E. Thomas", is written over a horizontal line.

Scott E. Thomas
Chairman

Enclosures

Factual and Legal Analysis

Procedures

Designation of Counsel Form

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Marvin Rosen, Esq. MUR: 4884
Greenberg, Traurig, Hoffman, Lipoff
Rosen & Quentel, P.A.

I. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). On December 1, 1997, the Commission received a *sua sponte* submission filed by counsel for Future Tech International, Inc. ("Future Tech") and its chief executive Mr. Mark Jimenez, disclosing that the corporation, at the instruction of Mr. Jimenez, reimbursed various employees via company bonuses for contributions to federal candidate committees totaling approximately \$40,000 made between February 1994 and September 1996. In response to requests from the Commission, on March 23, 1998, counsel filed a supplement to the *sua sponte* disclosing that Future Tech and Mr. Jimenez made approximately \$110,000 in contributions to the Democratic National Committee's ("DNC's") non-federal account between May 1993 and March 1994, at a time when Mr. Jimenez was a foreign national.

Information contained in the *sua sponte* submissions, as well as other information available to the Commission, points to the involvement of Greenberg, Traurig, Hoffman, Lipoff Rosen & Quentel, P.A. ("Greenberg & Traurig"), through Mr. Marvin Rosen, in the solicitation of prohibited contributions from Future Tech and Mr. Jimenez.

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), sets forth limitations and prohibitions on the type of funds which may be used in elections. Section 441e states that it shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value in connection with an election to any political office; or for any person -- including any political committee -- to solicit, accept, or receive any such contribution from a foreign national.¹ 2 U.S.C. § 441e(a); 11 C.F.R. § 110.4(a).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, *inter alia*, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under Section 611(b), a "foreign principal" includes a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States. The Act further provides that resident aliens are excluded from the definition of "foreign national." See 2 U.S.C. § 441e(b)(2). The prohibition is further detailed in the Commission's Regulations at 11 C.F.R. § 110.4(a)(3). This provision states that a foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, with regard to such person's federal or non-federal election-related activities, such as decisions concerning the making of contributions or

¹ One district court recently held the foreign national prohibition at Section 441e applicable only to "contributions" for federal elections. See U.S. v. Trie, Crim. No. 98-0029-1 (P.L.F) (D.D.C. Oct. 9, 1998). However, this lower court opinion failed to consider either the legislative history establishing the provision's broad scope or the Commission's consistent application of the prohibition to non-federal elections. See MURs 2892, 3460, 4398 and 4638.

expenditures in connection with elections for any local, state, or federal office or decisions concerning the administration of a political committee.

In addressing this issue of whether a domestic subsidiary of a foreign national parent may make contributions in connection with local, State or Federal campaigns for political office, the Commission has looked to two factors: the source of the funds used to make the contributions and the nationality status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic corporation where the source of funds is a foreign national, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. *See, e.g.*, A.O.s 1989-20, 2 Fed. Election Camp. Guide (CCH) ¶ 5970 (Oct. 27, 1989); 1985-3, 2 Fed. Election Camp. Guide (CCH) ¶ 5809 (March 4, 1989); and 1981-36, 2 Fed. Election Camp. Guide (CCH) ¶ 5632 (Dec. 9, 1981). *See also*, A.O. 1992-16, 2 Fed. Election Camp. Guide (CCH) ¶ 6059 (June 26, 1992).

Even if the funds in question are from a domestic corporation, the Commission also looks at the nationality status of the decision makers. *See* A.O.s 1985-3 and 1982-10, 2 Fed. Election Camp. Guide (CCH) ¶ 5651 (March 29, 1982). The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent, or any other person who is a foreign national, participate in any way in the decision-making process regarding the contributions. This prohibition has been codified at 11 C.F.R. § 110.4(a)(3), as noted above.

Accordingly, it is clear that the Act prohibits contributions from foreign nationals, as well as contributions from domestic corporations where either the funds originate from a foreign

national source or a foreign national is involved in the decision concerning the making of the contribution.

B. Background

Future Tech is a Florida corporation founded by Mr. Leonard Keller on approximately August 17, 1988. *See Dun & Bradstreet Database.* According to the *sua sponte*, in 1989 Mr. Jimenez, at the time a national of the Republic of the Philippines, purchased a controlling 80% interest in the then bankrupt Future Tech for approximately \$30,000, eventually becoming Chairman of the Board and Chief Executive Officer of the corporation. *See Sua Sponte* at 1; *Dun & Bradstreet Database.* Future Tech's principal business is the wholesale exportation of computer hardware, including products manufactured by related corporations under the trade name MarkVision, to Central American, South American and Caribbean markets.² Under Mr. Jimenez's control, the company has grown to approximately \$251,261,000 in annual sales. *See Dun and Bradstreet Database.* It appears that in approximately July 1994, Mr. Jimenez obtained permanent resident alien status. *See Sua Sponte Supplement* at 3.

C. Foreign National Contributions

As noted, the *sua sponte* submissions disclose that Future Tech, at Mr. Jimenez's direction, made approximately \$110,000 in contributions to the DNC's non-federal account prior to July 1994, and therefore at a time when Mr. Jimenez was a foreign national. These contributions are as follows:

² There exist three separate corporate entities related to the MarkVision trade name – MarkVision, Inc., MarkVision Computers, Inc. and MarkVision Holdings, Inc.

<u>Contributor</u>	<u>Date</u>	<u>Amount</u>
Future Tech Inc.	May 10, 1993	\$ 5,000
Future Tech Inc.	May 10, 1993	5,000
Future Tech Internat'l Inc.	March 24, 1994	50,000
Future Tech Internat'l Inc.	March 24, 1994	<u>50,000</u>
	Total	\$110,000

Future Tech reveals in the *sua sponte* submissions that its political contributions were solicited by a law firm retained by the corporation. *See generally, Sua Sponte* at 12. Although Future Tech does not disclose the law firm's identity in connection with the political contributions, and although Future Tech appears to have retained more than one law firm during the period at issue, there is an initial indication that Greenberg & Traurig may have been involved in the solicitation of a least a portion of Future Tech's contributions. Internal DNC contribution documents obtained by the Commission identify Mr. Marvin Rosen, a named partner of Greenberg & Traurig, as the solicitor of Future Tech's two \$50,000 contributions to the DNC in 1994. These contributions appear to have been solicited prior to Mr. Jimenez obtaining permanent resident alien status. Accordingly, there is reason to believe Greenberg, Traurig, Hoffman, Lipoff, Rosen and Quentel, P.A., and Marvin Rosen, violated 2 U.S.C. § 441e.